

AN ACT  
RELATING TO HEALTH INSURANCE; AMENDING SECTIONS OF THE  
NONPROFIT HEALTH CARE PLAN LAW RELATING TO QUALIFICATIONS  
FOR ORGANIZATION IN THE STATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-37-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 621, as amended) is amended to read:

"59A-37-6. APPROVAL BY SUPERINTENDENT--REVIEW.--

A. The superintendent shall approve any merger or other acquisition of control referred to in Section 59A-37-4 NMSA 1978 unless, after a public hearing thereon, he finds that:

(1) after the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;

(2) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(3) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

(4) the plans or proposals which the acquiring party has to liquidate the insurer, sell its

assets or consolidate or merge it with any other person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(5) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control;

(6) the applicable provisions of Chapter 59A, Article 34 NMSA 1978 would be violated; or

(7) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

B. The superintendent may retain at the acquiring party's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the superintendent's staff reasonably necessary to assist the superintendent to review the proposed acquisition of control.

C. The superintendent shall ensure, by imposition of conditions, if necessary, that New Mexico charitable assets are protected and preserved for the benefit of the people of New Mexico."

Section 2. Section 59A-47-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.2) is amended to read:

"59A-47-4. ORGANIZATION--PROFIT CORPORATIONS  
PROHIBITED--MERGER AND CONSOLIDATION OF HEALTH CARE PLANS.--

A. A corporation may be organized under the laws of this state which provide for the organization of nonprofit corporations, as a nonprofit corporation organized

for making health care expense payments on a service benefit basis or an indemnity basis, or both, for subscribers under contract with such corporation.

B. The articles of incorporation of each domestic health care plan shall have endorsed thereon or annexed thereto the consent of the superintendent prior to filing. The amendment of the articles of incorporation of any domestic health care plan shall have endorsed thereon or annexed thereto the consent of the superintendent prior to filing.

C. The directors of a domestic health care plan shall be chosen in accordance with the bylaws of the corporation, subject to the following:

(1) at least twenty-five percent of the directors shall be members of the general public; and

(2) the balance of the directors shall be either representatives of purveyors or members of the general public.

D. No domestic health care plan shall be converted into a corporation organized for pecuniary profit; and any such plan shall be maintained and operated primarily for the benefit of its subscribers.

E. A domestic health care plan may merge only with another domestic health care plan in accordance with applicable provisions of the Insurance Holding Company Law and the Nonprofit Corporation Act."

Section 3. Section 59A-47-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.3, as amended) is amended to read:

"59A-47-5. QUALIFICATIONS FOR HEALTH CARE PLAN

AUTHORITY.--The superintendent shall not authorize any proposed health care plan to solicit preliminary applications from subscribers or to transact business as a health care plan unless he finds after such investigation and hearings as he deems advisable that the proposed health care plan is qualified therefor as follows:

A. it shall be duly incorporated as a health care plan under the laws of a state governing incorporation of nonprofit corporations;

B. its sponsors shall have financial stability and its directors and officers shall be individuals of good personal and business reputation and integrity;

C. its proposed management shall possess experience and competence as to the business in which to engage;

D. it shall have ready access to health care facilities in this state reasonably sufficient to provide the health care services to be covered by its subscriber contracts, whether on service or indemnity bases;

E. it shall actually or prospectively have sufficient funds to finance preliminary solicitation of subscribers and to conduct its operations with reasonable margin of financial safety;

F. its proposed contracts to be offered subscribers shall be well drafted and provide substantial health care coverage and benefits at reasonable premium rates;

G. operation of the health care plan in the area of this state proposed to be served would be in the public interest and of convenience to its residents; and

H. if it a newly formed health care plan, prior to being granted an initial certificate of authority to engage in business, it shall have applied for and received from the superintendent a preliminary permit to solicit subscribers' applications for health care contracts as proposed to be offered, and thereunder have solicited and received, within one year from date of the preliminary permit, applications for coverage of not less than one thousand individuals under such contracts together with payment in advance of one month's premium therefor or if it is a foreign health care plan with a certificate of authority from its state of domicile, it must already cover not less than one thousand individuals."

Section 4. Section 59A-47-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.6) is amended to read:

"59A-47-8. CERTIFICATE OF AUTHORITY REQUIRED--APPLICATION AND CONDITIONS--EXCEPTIONS.--

A. No health care plan shall make health care expense payments unless and until it has obtained from the superintendent a certificate of authority to do business. Violation of this provision shall constitute a misdemeanor punishable upon conviction by a fine of not to exceed one thousand dollars (\$1,000).

B. A newly formed health care plan's application for initial certificate of authority must be filed with the superintendent prior to expiration of one year from date of issuance of the preliminary permit referred to in Section 59A-47-6 NMSA 1978.

C. The application for certificate of authority shall be in the form prescribed and furnished by the

superintendent consistent with Chapter 59A, Article 47 NMSA 1978, and be verified by two of the applicant's officers. The application shall include or be accompanied by such proof as the superintendent may reasonably require that the applicant is qualified for the certificate of authority under this article. At filing of the application the applicant shall pay to the superintendent the applicable filing fee as specified in Section 59A-6-1 NMSA 1978. The filing fee shall not be refundable.

D. No such certificate of authority shall be required for a health care plan formerly so authorized, to enable it to investigate and settle losses under its contracts lawfully written in New Mexico, or to liquidate assets and liabilities (other than collection of new premiums) resulting from its former authorized operations in this state. A health care plan not transacting new business in this state but continuing collection of premiums on and servicing contracts remaining in force as to residents of or risks located in this state, is transacting business in New Mexico for the purpose of premium tax requirements only and is not required to have a certificate of authority."

Section 5. Section 59A-47-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.7) is amended to read:

"59A-47-9. ISSUANCE AND DENIAL OF INITIAL CERTIFICATE OF AUTHORITY.--

A. If after such investigation as he deems advisable the superintendent finds that the applicant is in sound financial condition and is otherwise qualified therefor, he shall issue to the applicant a certificate of authority as a health care plan.

B. If the superintendent does not so find, he shall deny issuance of the certificate of authority and notify the applicant thereof in writing stating the reasons for such denial."

Section 6. Section 59A-47-22 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.20) is amended to read:

"59A-47-22. TRANSFER OF SUBSCRIBERSHIP.--

A. A health care plan may enter into agreements with another health care plan or mutual company similarly engaged in this state or another state or country for transfer of subscribers from one such plan to the other, subject to prior approval of any such agreement by the superintendent. The superintendent shall disapprove any such agreement if he finds on basis of such investigation as he deems advisable that the agreement in reasonable probability would result in loss to the health care plan authorized to do business in this state or is otherwise unfair or inequitable. The superintendent shall approve the agreement if he finds that the transfer of subscribership is to be accompanied by transfer of funds representing reserves in amount adequate to cover all liabilities to be incurred by the assuming health care plan through such transfer, that the transfer meets the applicable requirements of Chapter 59A, Article 34 NMSA 1978 and of the Nonprofit Corporation Act for disposition or distribution of assets and that the agreement is otherwise fair and equitable to the insurers and subscribers involved.

B. The superintendent shall ensure, by imposition of conditions, if necessary, that New Mexico charitable assets are protected and preserved for the benefit of the

people of New Mexico." \_\_\_\_\_

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